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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Application of)	MM Docket No. 93-156
)	
Trinity Christian Center of)	
Santa Ana, Inc., d/b/a TRINITY)	
BROADCASTING NETWORK)	File No. BRCT-911129KR
)	
For Renewal of License of)	
Commercial Television Station)	
WHSB-TV, Monroe, Georgia)	
)	
and)	
)	
GLENDAL BROADCASTING COMPANY)	File No. BPCT-920228KE
)	
For Construction Permit)	
Monroe, Georgia)	

To: Honorable Joseph Chachkin
Administrative Law Judge

OPPOSITION TO CONTINGENT MOTION
TO ENLARGE ISSUES

Glendale Broadcasting Company (Glendale), by its attorneys, now opposes the "Contingent Motion to Enlarge Issues" filed by Trinity Christian Center of Santa Ana, Inc. d/b/a Trinity Broadcasting Network (Trinity) on August 12, 1993.

Trinity's motion can be divided into two parts. Trinity seeks the specification of eight hearing issues that it requested against Glendale in the Miami, Florida proceeding but which the Presiding Judge found no basis for specifying. Memorandum Opinion and Order, FCC 93M-469 (released July 15, 1993). Trinity explicitly states that it "does not expect reconsideration of those rulings here" but is merely

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preserving its appellate rights. Trinity Motion, P. 2. Consistent with these representations, Trinity offers no new argument but incorporates its prior motion and reply by reference. Trinity Motion, P. 11. Since Trinity does not seek reconsideration of the prior ruling, its new request for the same issues in this proceeding must also be denied. Glendale hereby incorporates by reference its June 7, 1993 "Opposition to Contingent Motion to Enlarge Issues Against Glendale Broadcasting Company." It also asks the Presiding Judge to summarily deny Trinity's issue requests, which have already been rejected.

The majority of Trinity's enlargement motion is dedicated to a wrongheaded and speculative attack on Glendale's financial qualifications. Trinity seeks an issue to determine whether Glendale is financially qualified. The request is based upon three fundamentally incorrect premises: that a fact must be assumed in the absence of evidence that the fact is true, that an applicant is required to have appraisals for non-liquid assets in hand at the time it certifies to its financial qualifications, and that Glendale has an obligation to demonstrate its financial qualifications merely because Trinity filed a motion to enlarge issues. None of Trinity's premises are true, and its request for a financial qualifications issue must be denied.

This motion is the third time Trinity has attacked Glendale's financial certifications. In the Miami proceeding, the Presiding Judge rejected Trinity's request for a financial misrepresentation issue as well as a related suggestion that as a financial qualifications issue be specified. Memorandum Opinion and Order, FCC 93M-469, supra.¹ More importantly, the Presiding Judge indicated at the August 13 prehearing conference that he will deny Trinity's motion to dismiss Glendale's application, which was based upon the identical theory it is offering here. Trinity's current motion contains no new evidence or new reasoning. Trinity is very desperately using every available method to delve into Glendale's financial qualifications. In the absence of competent evidence raising a prima facie case that Glendale is not financially qualified, Trinity has engaged in pure speculation.

Trinity has simply abandoned many of the arguments it made in its motion to dismiss. The only argument it still offers is that Glendale is not financially qualified because George Gardner allegedly did not have appraisals performed on

¹ Trinity relies upon the Presiding Judge's statement that "the failure to secure appraisals of non-liquid assets (assuming that to be the case) may raise financial qualifications questions." Trinity Motion, P. 10. The Presiding Judge's indication that an assumption was necessary indicates that Trinity has not adequately proven its premise. The sentence does not indicate that Trinity's argument was accepted.

his non-liquid assets prior to certification. As Glendale has shown in opposing the motion to dismiss, however, no such requirement exists. Instead of repeating itself, Glendale will quote at length from Pp. 5-7 of its July 8, 1993 "Opposition to Motion to Dismiss Application":

A more fundamental problem with Trinity's argument is that Mr. Gardner was not required to have professional appraisals of non-liquid assets in hand when he certified. The cases cited by Trinity at Page 4 of its motion stand for the proposition that if a financial qualifications issue is specified against an applicant and that applicant is forced to prove its qualifications at hearing, the value of real estate and certain other types of property must be established by professional appraisals. None of these cases stand for the proposition that such appraisals must be in hand at the time of certification. Indeed, the first five cases Trinity cites (Central Florida, Chadwell, Christian Children's Network, Texas Communications, and Port Huron) all involve applications filed under the 1981 version of FCC Form 301. Such applicants were not required to prepare any documentation at the time of certification. Northampton Media Associates, 4 FCC Rcd 5517, 5519, 66 RR 2d 1246, 1249 (1989). Dodge-Point Broadcasting Co., 11 FCC 2d 751, 754, 12 RR 2d 457, 461 (1968) and Vista Broadcasting Company, Inc., 18 FCC 2d 636, 637, 16 RR 2d 838, 839 (Rev. Bd. 1969) are cases that were decided at a time when applications were processed in a completely different manner and such documentation had to be submitted as part of the application.

None of the cases cited by Trinity deal with the documentation requirements imposed by the Commission in its 1989 revision of FCC Form 301. It has thus totally failed to support its argument. Glendale's applications were filed on the June 1989 version of FCC Form 301. The instructions to that form

contained detailed instructions on what financial documentation applications must have. A copy of the pertinent portions of these instructions are submitted as Attachment 2 to this petition. These instructions do not require that an applicant have appraisals for non-liquid assets in hand at the time of certification. Instead, the instructions indicate that if non-liquid assets are being relied upon, all that is required is:

a statement showing how non-liquid assets will be used to provide the funds, and the extent to which such assets have liens or prior obligations against them.

Mr. Gardner's letter to Ms. Adams states that he has "identified specific assets which are unencumbered and that can be readily converted to cash or other liquid assets. The sale of these assets would provide me with specified liquid assets to meet this loan commitment." Trinity Motion, Exhibit 2, P. 1 (emphasis added). Thus, Glendale fully complied with the Commission's documentation requirements for non-liquid assets, and Trinity's arguments to the contrary must be rejected.

Trinity obviously has no response to this argument because it wholly ignores this point.² Trinity argued in its reply to Glendale that Mr. Gardner had an obligation to ascertain the value of his non-liquid assets. Trinity Reply,

² In a transparent act of sophistry and chutzpah, Trinity wrote in its "Reply to Opposition to Motion to Dismiss Application" (at P. 6 n.4) that "Glendale misplaces its reliance on cases where applicants have been permitted to wait until hearing before obtaining appraisals of non-liquid assets that were relied upon when the application was filed." These were the very cases, however, that Trinity was relying upon for the proposition that appraisals had to be on hand at the time of certification. Trinity's pleading tactics extend beyond permissible advocacy.

Pp. 5-6. He clearly did ascertain that value, however, since he had a financial statement listing total assets and net worth of \$11,997,327 with no liabilities. Trinity Motion, Attachment 4, P. 1. Trinity's argument is a classic red herring. The question is not whether the assets had to be valued, but whether the valuation had to be supported by professional appraisals. The answer to the latter question is indisputably no.

Even if appraisals were required, Trinity has wholly failed to meet its burden of proving that Mr. Gardner lacked appraisals at the time of certification. Section 1.229(d) of the Commission's rules states:

Such motions, opposition thereto, and replies to oppositions shall contain specific allegations of fact sufficient to support the action requested. Such allegations of fact, except for those of which official notice may be taken, shall be supported by affidavits of a person or persons having personal knowledge thereof.

Trinity has never offered any affidavit or official notice material which demonstrates that appraisals were absent at the time of the certification. Instead, it has improperly attempted to place the burden on Glendale by arguing that the absence of appraisals must be inferred because Glendale has not specifically stated that appraisals existed. The rule, however, explicitly places the burden on Trinity to support

its allegations with an affidavit. No such affidavit has been offered.

Trinity has also repeatedly ignored the Commission's holding that an applicant has no obligation to document its financial plan until a petitioner makes a prima facie case that the applicant is unqualified. Priscilla L. Schwier, 4 FCC Rcd 2659, 2660, 66 RR 2d 727, 729 (1989). Trinity wants the Presiding Judge to make Glendale prove it is financially qualified although Trinity has not made the prima facie case required by the Communications Act. Trinity argues that the Commission may draw inferences. Trinity Motion, P. 8, citing Gencom, Inc. v. FCC, 832 F.2d 171, 180-181 (D.C. Cir. 1987). Again, Trinity fails to correctly cite a case. In Gencom, the Court said that the Commission "may draw factual and legal inferences from undisputed evidentiary facts." In order for an undisputed evidentiary fact to exist, the factual allegation must be supported in the manner required by the Act with an affidavit of a person with personal knowledge of the facts or by competent materials which may be officially noticed. Trinity has not done this.

After reviewing the documents produced by Trinity in the Miami proceeding, Glendale fully understands why Trinity wishes to divert attention from the serious questions raised concerning its qualifications to remain a Commission licensee. Trinity has gone to ludicrous lengths to pry into Glendale's

financial qualifications although Glendale's finances have no relevance to the designated issues. It has argued that Glendale misrepresented its financial qualifications because Glendale voluntarily disclosed that it was relying upon non-liquid assets of Mr. Gardner. It has made the preposterous argument that Glendale's Miami bank letter is relevant to Glendale's diversification standing. Now, Trinity argues that Glendale is not financially qualified because Glendale has not proven that it complied with a non-existent requirement to have appraisals in hand at the time of certification. The Presiding Judge should place Trinity on notice that he will not tolerate Trinity continuing to mischaracterize precedent and make patently specious arguments. Meanwhile, its present motion must be denied.

Accordingly, Glendale asks the Presiding Judge to deny Trinity's "Contingent Motion to Enlarge Issues".

Respectfully submitted,

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Date: September 1, 1993

CERTIFICATE OF SERVICE

I, Dana Chisholm, do hereby certify that on the 1st day of September 1993, a copy of the foregoing "Opposition To Contingent Motion To Enlarge Issues" was sent first-class mail, postage prepaid to the following:

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